IN THE HIGH COURT OF JUDICATURE AT MADRS

Dated :- 12.04.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal No.3334 of 2004

The Management of
Kancheepuram Murugan Silk
Weavers Co-operative Production
and Sales Society Limited
No.79, Gandhi Road,
Kancheepuram 631 501. ... Appellant/Petitioner

vs.

1. The Presiding Officer,
Industrial Tribunal,
Tamil Nadu, Chennai 600 104.

2. The Secretary,
Kancheepuram Murugan Silk
Co-operative Society
Weavers Union,
50-C, T.K. Nambi Street,
Kancheepuram-631 503. ... Respondents/Respondent

Appeal under Clause 15 of the Letter Patent against the order of the learned single Judge, dated 13.08.2004, made in W.P. No.39896 of 2002. The Writ Petition presented under Article 226 of the constitution of India to issue a writ of Certiorari calling for the records of the Ist respondent in I.D.No. 25/97 and quash the award dated 21.3.2002.

For Appellant : Mr.S.Ravindran,
for Mr.T.S.Gopalan

For Respondent No.2 : Mr.K.V.Ananthakriushnan

(Judgement of the Court, delivered by P.SATHASIVAM, J.)

Aggrieved by the order of the learned single Judge, dated 13.08.2004, made in W.P. No.39896 of 2002, remanding the matter back to the Industrial Tribunal, Chennai, the Management of Kancheepuram Murugan Silk Weavers Co-

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operative Production and Sales Society Limited has filed the above Writ Appeal.

2. For convenience, we shall refer the parties as arrayed in the Writ Petition.

3. According to the petitioner, the Society was formed in the year 1957 with a view to enroll the Handloom Weavers, having their own looms in their houses; supply them yarn on credit; get the yearn converted in the form of finished products; and, after giving credit to the value of materials, pay them the conversion charges. These weavers do not work in the premises of the petitioner society. They are free to carry on any other occupation and also free to do weaving for any master weaver or private parties engaged in handlooms. They cannot be called as 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act. There is an enactment to provide for the welfare of the workers in the Handloom Industry and to regulate the conditions of their work and security of their employment called the Tamil Nadu Handloom Workers (Conditions of Employment and Miscellaneous Provisions) Act, 1981 (in short Handloom Act). This Act came into force from 12.3.1982. The domestic weavers like the members of the petitioner society can invoke the provisions of the Industrial Disputes Act only by reference to Section 52 of the Handloom Act. By G.O. Ms. No.723, Labour and Employment dated 07.04.1982, the Government of Tamil Nadu exempted the registered Handloom Weavers Co-operative Societies like the petitioner from all the provisions of the Act and the rules made thereunder. By virtue of this notification, the entire Act including Section 52 has no application to the petitioner and its members. As such, the weavers of the respondent cannot maintain an industrial dispute against the petitioner.

(a) The petitioner society is functioning under the control of the Director of Handloom and Textiles. There are more than thousand Handloom Co-operative Societies similar to the petitioner society functioning under the control of the Director of Handloom and Textiles. The rates of charges payable to the domestic weavers for various types of handlooms are fixed and they are being revised periodically. The charges payable to the weavers are fair and reasonable.

(b) A few domestic weavers, who were not employees of the petitioner society, through the second respondent union purported to raise an industrial dispute, claiming increase in basic wages and grant of dearness allowance. The said demands were referred for adjudication to the first respondent in I.D. No.25 of 1997. The second respondent filed a claim statement contending that the basic wages paid to the employees of the petitioner society were very low and the same should be increased by 50%. They also contended that the Society should pay Dearness Allowance to the employees in terms of G.O. No.39 dated 18.01.1994 which was applicable to employment in Handloom Silk Weavers Industry in the State of Tamil Nadu.

( c ) The petitioner society filed its counter statement raising the point that the second respondent Union does not have representative

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capacity to maintain the dispute. The domestic weavers were not the employees of the petitioner society as there was no employer-employee relationship between them. The domestic weavers cannot be termed as 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act. In terms of G.O. Ms. No.723, Labour and Employment, dated 7.4.1982, registered handloom weavers co-operative societies had been exempted from all provisions of the Handloom Act, 1981. G.O.(D) No.39, dated 18.1.1994, fixing minimum wages of employment in handloom silk weaving industry, was not applicable to the petitioner society as it is a co-operative society; therefore, the demand raised by the Union should be rejected.

(d) By Award, dated 21.3.2002, the first respondent/Tribunal held that the term 'employee' as defined under the Act included domestic weaver, that the petitioner was an employer, that the members of the second respondent union were employees and that there was employer-employee relationship between the petitioner Society and the members of the 2nd respondent union. It was further held that the petitioner is bound by G.O. (D) No.739, Labour and Employment, dated 18.1.1994; therefore, fixation of revision of pay should be done in accordance with the said G.O. along with corresponding rise in dearness allowance as per the existing rules.

(e) The petitioner challenged the award of the first respondent, dated 21.3.2002, by filing Writ Petition before this Court, i.e., W.P. No.39896 of 2002. By Order dated 13.08.2004, the learned Judge, after narrating the contentions raised on behalf of the petitioner, has merely considered the 2nd contention viz., the representative capacity of the 2nd respondent to maintain the dispute, and held that, since the 2nd respondent has not proved its representative capacity to raise the dispute, the matter has to be remanded to the 1st respondent with a view to enable the 2nd respondent union to lead adequate evidence. The learned Judge failed to consider other three vital contentions projected on behalf of the petitioner and if considered would have resulted in quashing the award of the 1st respondent in its entirety without any scope for remand.

4. According to the 2nd respondent/Union, the Commissioner of Labour, by his proceedings dated 01.03.2000, directed the Director of Handloom and Textiles to implement the Government Order regarding dearness allowance. But the Director of Handlooms and Textiles, instead of implementing the Government Order for dearness allowance, directed the Society to pay only 10%. Therefore, the second respondent is claiming the difference in Dearness Allowance between the D.A. fixed under the G.O. and the D.A. paid at 10% on the basic wages. The learned Judge accepted the award in all other aspects and remitted back the matter to the Tribunal only for the limited scope to lead evidence as to the locus standi of the 2nd respondent by a resolution passed by the Members authorising them to raise the dispute. It is also stated that that the Notification issued under Section 54 of the Handloom Act does not specify the names of the societies exempted under the said notification. Accordingly, the notification will not apply to the petitioner society. The society has

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earned a profit of Rs.93,13,012/- for the year 2001-2002. The Government has initiated criminal proceedings against some of the officers of the society for breach of trust. By paying a meagre amount to the employees, the society will not incur any loss. Members of the 2nd respondent union are entitled to the benefits of the award passed by the Labour Court.

5. Heard Mr.S.Ravindran, learned counsel for the appellant/Management, and Mr.K.V.Ananathakrishnan, learned counsel for the 2nd respondent-weavers' union.

6. Mr.Ravindran, learned counsel for the Management (society), by drawing our attention to various grounds raised in the writ petition, submitted that without considering the same and recording findings thereon, the learned Judge committed an error in remitting the matter to the Industrial Tribunal only to determine the question as to whether the Union has locus standi to maintain the dispute. He further contended that, by virtue of Section 54 of the Handloom Act, the Government exempted the petitioner/society from the provisions of the Handloom Act. According to him, inasmuch as by virtue of G.O.Ms.No.723, the petitioner/society had been exempted from the provisions of the Handloom Act, 1981, the impact/application of Section 52 that the provisions of the Industrial Disputes Act shall apply to matters arising between the employer and employee under the Handloom Act completely looses its vigour and operation. He also submitted that, if the said contentions are acceptable, the Industrial Dispute raised by the Union is liable to be rejected and there is no need to remand the matter to the Tribunal. He specifically submitted that the above mentioned relevant aspects have not been considered by the learned Judge.

7. On the other hand, Mr.K.V.Ananthakrishnan submitted that the learned Judge, after considering all the materials, accepted the reasonings in the award and only for the purpose of finding out the locus standi of the Union to raise such dispute, remitted the matter back, hence, there is no ground for interference.

8. In the light of the above contentions, we carefully considered the award of the Tribunal, points/grounds raised in the affidavit filed in support of the writ petition by the Society as well as the order of the learned Judge dated 13.08.2004.

9. We find from the Order dated 13.08.2004 that upto paragraph No.5, the learned Judge has reproduced the stand/submissions of the society as well as the Union. In the other two paragraphs viz., para Nos.6 and 7, the learned Judge has merely observed that the Award has to be set aside on the ground that the Tribunal has not properly determined the questions as to whether the Union has got locus standi to bring forth such an Industrial Dispute. After saying so, in the last para ie., para No.8, the learned Judge setaside the award and remitted the matter back to the Tribunal. Though the learned Judge took pains to elaborate the

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stand/submission of either sides has not made any discussion on the same so as to render findings thereon. We are satisfied that the relevant issues raised in the writ petition, viz.,

(a) Domestic Weavers were not employees of the petitioner / society;
(b) there was no employer / employee relationship between them;
(c) The domestic weavers cannot be termed as workmen within the meaning of section 2 (s) of the I.D. Act;
(d) In terms of G.O. Ms. No.723, Labour and Employment, dated 07.04.1982, registered handloom weavers co-operative societies were exempted from all provisions of the said Act including Industrial Disputes Act.
(e) G.O.(D) No.39 dated 18.1.1994 fixing minimum wages of employment in handloom silk weaving industry was not applicable to the petitioner society as it is a co-operative society; therefore, the demand raised by the union should be rejected; were neither adverted to nor considered by the learned Judge by concluding on the acceptability or otherwise of the same. Though Mr.Ananthakrishnan, learned counsel for the Union, advanced arguments on those aspects elaborately, the fact remains that those points have not been considered and answered by the learned Judge. It is true that both Mr. Ravindran and Mr.Ananthakrishnan elaborately argued on the above points citing several decisions of this Court as well as the Apex Court. Inasmuch those issues have not been considered by the learned Judge, we are of the view that both parties must be given an opportunity to put forth their stand before the learned Judge. In those circumstances, we are not inclined to discuss and refer to either the arguments or the case laws and it is but proper for the learned Judge to consider all the points raised by both sides and arrive at a decision one way or other.

10. In those circumstances, the order of the learned single Judge dated 13.08.2004 made in W.P. No.39896 of 2002 is set aside. Direction is issued for hearing of the writ petition on all aspects as mentioned above. Inasmuch as the writ petition is of the year 2002 and relates to the claim of the Union in respect of Dearness Allowance and increase in basic wages, Office to list the writ petition before the learned Judge dealing with the subject on 06.06.2007 for final disposal.

The writ appeal is allowed on the above terms. No costs.

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Sd/
Asst. Registrar

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Sub Asst.Registrar

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To

1.The Presiding Officer,
Industrial Tribunal,
Tamil Nadu, Chennai 600 104.
2. Section officer, Writ Section. High Court, Madras.
(For posting of W.P.No. 39896/02 on 6.6.2007)
+ One cc to M/s T.S. Gopalan & Co (SR.No. 23692)
+ One cc to M/s K.V. Ananthakrushan, Advocate (SR.No. 23356)
RS (co)
sg 18/4/07

Judgement
in W.A. No.3334/2004.

12.04.2007.

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